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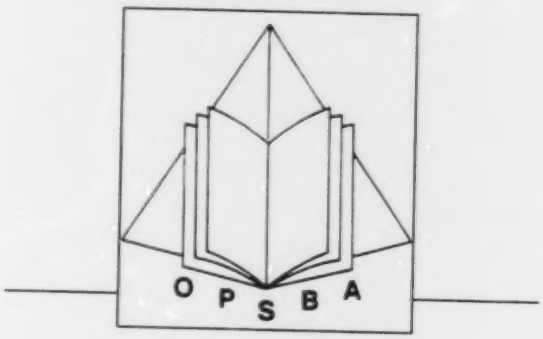
ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION



SUBMISSION TO THE SENATE STANDING COMMITTEE ON BANKING, TRADE AND COMMERCE REGARDING BILL S-8

AN ACT TO AMEND THE COPYRIGHT ACT

APRIL 4, 1990

MEMBER BOARDS

*AIRY & SABINE DISTRICT SCHOOL AREA BOARD
*ASQUITH-GARVEY DISTRICT SCHOOL AREA BOARD
*ATIKOKAN BOARD OF EDUCATION
*BRANT COUNTY BOARD OF EDUCATION
*BRUCE COUNTY BOARD OF EDUCATION
*CARAMAT DISTRICT SCHOOL AREA BOARD
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*LEEDS & GRENVILLE COUNTY BOARD OF EDUCATION
*LENNOX & ADDINGTON COUNTY BOARD OF EDUCATION
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*MANITOULIN BOARD OF EDUCATION
*METROPOLITAN TORONTO SCHOOL BOARD
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*MISSARENDA DISTRICT SCHOOL AREA BOARD
*MOOSE FACTORY ISLAND DISTRICT SCHOOL AREA BOARD
*MOOSONEE DISTRICT SCHOOL AREA BOARD
*MUSKOKA BOARD OF EDUCATION
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*NIPIGON-RED ROCK BOARD OF EDUCATION
*NIPISSING BOARD OF EDUCATION
*NORFOLK BOARD OF EDUCATION
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*PRESCOTT & RUSSELL COUNTY BOARD OF EDUCATION
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*SIMCOE COUNTY BOARD OF EDUCATION
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*TIMISKAMING BOARD OF EDUCATION
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*WINDSOR BOARD OF EDUCATION
*BOARD OF EDUCATION FOR THE CITY OF YORK

I. Introduction

The Ontario Public School Boards' Association (OPSBA) welcomes this opportunity to express its point of view to the Senate Standing Committee on Banking, Trade & Commerce concerning the matter of Bill S-8. This is our second appearance before this Committee on the topic of copyright. In March of 1988, we took part in a presentation on Bill C-60 with others from the Ontario education community.

This Association is a voice for the common interests of public school boards in Ontario which together provide elementary and secondary education to 1.2 million children and youth as well as providing continuing education to about 500,000 adults. Our member boards employ about 75,000 teachers, administer budgets totalling more than $7 billion and are governed by locally elected school trustees. Our role today is to be advocates for the learning interests of school-aged children and youth who are not able or not organized to speak for themselves in the national forum.

A climate of uncertainty, apprehension, and growing frustration concerning copyright exists among students, educators, administrators and school trustees, and this climate is having a negative effect on the quality of education in schools. We support Bill S-8 because it will help resolve the uncertainty, reduce apprehension, and deal with the cause of the growing frustration. Bill S-8 is a significant step in the right direction, but it does not complete the journey for public policy makers. We want a great deal more than just the speedy passage of Bill S-8. The Copyright Act, as amended by Bill C-60 in 1988, is contributing to the creation of barriers to education. We urge the Government of Canada to honour its commitment to bring forward the second phase of changes to the Copyright Act to recognize the legitimate interests of educational users of copyright.

Between 1984 and 1986, the federal government published three documents on copyright: From Gutenberg to Telidon (1984), A Charter of Rights for Creators (1985), and Government Response (1986). In the cover letter to the Government Response, the Minister of Communications and the Minister of Consumer and Corporate Affairs wrote:

"...new copyright legislation must reflect the balance between the legitimate interests of creators to be paid for the use of their works and the needs of users to have access to their works."

II OPSBA Perspective on Copyright

OPSBA supports the need for balance between the interests of copyright owners to be paid for the use of their works and the needs of users to have access to these works. Our member school boards are at the same time creators, owners and users of copyright-protected information. A growing volume of learning materials are being created by teachers and other professionals on the time and at the expense of their employers in response to classroom needs.

We oppose measures which create barriers to access to information for students and teachers. Access to copyright works is a prime concern -- universal access to all manner of information, fast, at a fair price, and, in some special but limited circumstances, access without fee.

Phase I of changes to the Copyright Act (Bill C-60) recognized the interests of copyright owners. Phase II was to consider the interests of users. Hon. Flora MacDonald as the Minister of Communications promised Phase II without delay on numerous occasions in 1987 and 1988. There is mounting, widespread distress among the education and library sectors over what is seen as an unkept promise.

To maximize learning opportunities, our students and their teachers need and deserve hassle-free, open access to the entire world of information that is published or performed in public. In this context, we define information in its broadest possible sense. This need for open access applies to information in the public domain and information protected by copyright. This is our public duty and moral obligation.

When we say hassle-free, open access we do not mean access at no cost. A blanket licence will be a valuable commodity when, at an uncertain time in the future, copyright collectives can deliver to school boards a blanket licence which truly provides open access to the entire world of copyrighted information. Nonetheless, school boards are concerned about any development which would increase costs. Copyright licensing fees are seen in light of other actions by federal and provincial authorities which place great demands without greater resources on school boards and their local taxpayers.

The key problems are two-fold:

1. the existing collectives are not powerful enough, and

2. there are not enough collectives.

As an example of the first problem, CanCopy, the new reprography collective for English language print materials, has developed only a limited repertoire of the works of a limited number of copyright owners. Therefore the scope of the blanket licence offered limits the value of the licence to users. The size of the so-called blanket appears to be about the size of a handkerchief. Bill S-8 will help CanCopy and others win the support and membership of more copyright owners because it will obliged copyright owners to provide access to their works on reasonable terms and conditions.

As an example of the second problem, there are no signs of a collective being organized to cover English language producers of films, videos and television, etc. This void when combined with the current position of certain individual copyright owners is causing problems for us.

III. Problems with Access to Non-Print Information

Since the passage of Bill C-60, we are aware of a deterioration in the climate of co-operation which used to exist between school boards and certain owners of non-print copyright materials.

What do Paramount Picture Corporation (Canada) Ltd., the Canadian Broadcasting Corporation and TV Ontario have in common? Each corporate body is denying students and teachers access to information they control and have publicly broadcast. We know of specific cases where school boards have sought and been refused permission to use Paramount feature films on video, CBC news reports and TV Ontario educational broadcasts as learning materials. We are prepared to supply particulars to this Senate Committee.

Bill S-8 will address this problem. In our opinion, no copyright owner should have the legal right to deny access to information for use in a non-profit educational institution such as a school board. Bill S-8 will enable school boards to have guaranteed access to information. A copyright owner is entitled to a fee for the use of his or her work. Under the Copyright Act, a copyright owner is not entitled to refuse access to a school board.

IV. The Importance of Media Literacy

The Ontario Ministry of Education is providing leadership in the important area of media literacy -- that is providing curriculum direction so that students learn to think critically and to evaluate the full meaning of messages carried by the mass media; i.e., advertising, promotion, news and public affairs. In fact, media literacy is a required part of the curriculum in Grades 7 through 12, as a part of

the English or French Language studies. High school students in Ontario must take at least five courses in English or French as a first language, and in two of those five compulsory courses one third of the scheduled classroom time must be devoted to media literacy. Access to suitable examples of advertisements, news reports and public affairs programs as broadcast by the mass media and printed by newspapers and magazines is necessary for this important course work.

It is our hope that Bill S-8 will provide education with a guaranteed right of access to such materials. Let the CBC and others negotiate a reasonable price with us: do not let the CBC and others refuse to negotiate, which unfortunately is the case today.

V. Problems with Access to Print Information

Because of the delays in the Government of Canada dealing with the legitimate concerns of educators and others affected by the copyright statute, there is a growing concern that events may overtake the Phase II process to the detriment of copyright users. Without Phase II legislation to address the special needs and considerations of education and libraries, there is not a level playing field for copyright owners and users as noted by the Report of this Senate Committee when it dealt with Bill C - 60 two years ago.

For example, one collective, CanCopy, is making an effort to negotiate a blanket licence with the Ontario Ministry of Education so that Ontario school boards have access to its repertoire of copyright works. There are significant unresolved problems in this regard.

This Association has significant concerns about the Ontario initiative. We have no objection to the current round of talks which are intended to facilitate a tentative agreement and we understand the need for confidentiality while negotiations take place. The Ministry negotiations are being conducted by a small team of civil servants with a specialized outside consultant as chief negotiator. The Ministry has an ad hoc advisory committee on copyright issues on which we enjoy representation, but the advisory group is not involved in the actual negotiations and does not have access to the specific language of the contemplated agreement.

We believe that no agreement should be signed until this Association and other concerned key partners in Ontario education have a full opportunity to review its details and provide advice to the Minister. We want a say before any licence agreement is finalized because it is the school

boards not the Ministry of Education which will have the responsibility of living with the outcome in the schools on a day-to-day basis. At this point in time, we have only hearsay knowledge and nothing in writing about the specific content of the contemplated licence agreement. We share the concern of many in the education and library communities that in the absence of the Phase II changes to the copyright, our Ministries are not negotiating on a level playing field. The ultimate losers may be our students. We fear that a negotiated agreement under the present circumstances may compromise the interests of education in the Phase II revision process.

Phase II is to deal with exemptions for education and libraries, among other matters. It is also to contain changes to make the collectives and their licences more effective. One example is the idea of a statutory limit on damages for copying of works not represented in a collective repertoire. Without this provision, the value of copyright collectives and their licences is compromised.

There are unresolved issues of importance to education. An example is the idea of an exception for making a single copy of a single article in a periodical for study. The present statutory law is unacceptably vague on this point because of the lack of a definition of the word "private" as it appears in the phrase "private study" in the fair dealing exemption. Educators, students and researchers do not know to a legal certainty whether their actions are legal or not. Many users rely upon the fair dealing provision of the Copyright Act, although different opinions exist about its applications. These opinions have not been tested in a court of law.

VI. Problems with Scope of "Published Work"

There appears to be a technical difficulty with part of the language of Bill S - 8 in Section 7. The existing language at lines 3 and 4 deals with the concept of "a published work" and may inadvertently not apply to a work which has been performed in public but which is not published as such. The Copyright Act defines publication and in so doing excludes the concept of a performance in public. The Copyright Act also defines a public performance as "any acoustic or visual representation of a dramatic work including by any mechanical instrument or by radio communication."

For greater legal certainty, we recommend that the language of Section 7 be clarified by deleting the word "published" at line three and adding after the word "work" the following: "that has been published or performed in public...". This amendment would ensure that both print and non-print works would be covered by the Bill.

VII. Conclusion

The climate of uncertainty, apprehension and frustration concerning copyright is undermining the quality of education. Copyright owners and their collectives contribute to an adversarial spirit by complaints of being "ripped off" and their frequent threats of lawsuits. Whatever the motive, the result is coercive and obstructive to the free exchange of ideas and information so necessary to a world-class quality of education in an age of global competition.

School boards and teachers are demonstrating increasing sensitivity to the issues of copyright and the concerns of copyright owners. School boards are directed by the Ministry of Education and teachers are directed by their administrators to obey a law which is, however, unacceptably vague in certain respects and virtually impossible to obey in other respects because of its heavy burden of obtaining permission in advance of use. Getting permission is rarely possible in a few days. Too often it is impossible or incredibly inconvenient to locate the appropriate copyright owner, on an individual basis. We want our teachers to teach, not to have to become copyright lawyers in order to function. Education sometimes cannot use and students cannot benefit from the most effective article, film or piece of music. Unresolved copyright issues are barriers to quality of education in our schools.

This association fully supports the legitimate interests and rights of copyright owners and creators. This is demonstrated by our willingness to have a representative participate on an advisory committee set up by the Ontario Ministry of Education on copyright issues, including negotiations with CanCopy. But the education sector also has rights and interests as copyright users, and it is time for these to be addressed by the Government and Parliament of Canada.

Bill S-8 deserves speedy passage on its own merits, subject to an amendment as suggested dealing with works performed in public and Phase II of government changes to the Copyright Act should proceed without further delay.